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May 23, 2022

Via Email and UPS Overnight

Ms. Gabriella Davis
Secretary
IAPMO Standards Council
4755 East Philadelphia Street
Ontario, CA 91761
United States

Re: Notice of Appeal

Dear Ms. Davis:

We are writing on behalf of our clients EVAPCO, Inc., SPX Inc., and Baltimore Aircoil Company, Inc., to submit an appeal pursuant to the Regulations Governing Committee Projects, including without limitation Regulation 1-6; IAPMO/ASSE PP-1:2021, Policies and Procedures for Consensus Development of American National Standards, including without limitation Policy and Procedure 8; and any other applicable policies, standards, or regulations. Please inform us if there are any applicable appeals fees required in connection with this appeal, and we will promptly remit payment.

Nature of the Appeal

The nature of this appeal relates to IAPMO's conduct at the Plumbing and Mechanical Technical Committee Meetings that took place May 2 through May 5, 2022. Specifically, we are appealing actions taken by the Plumbing and Mechanical Technical Committees regarding public comments to the UPC and UMC on matters related to cooling towers and Legionella and inaction by the technical committees in their failure to follow IAPMO and ANSI policies, procedures, and regulations.

Our clients have previously corresponded with IAPMO regarding proposed amendments to the UPC and UMC, including proposed appendices, and public comments on such proposed amendments (see attached May 2, 2022, letter from Jeffrey J. Jones to IAPMO regarding 2022 UMC and UPC Proposals; January 10, 2022, letter from EVAPCO, Inc., SPX Inc., and Baltimore Aircoil Company, Inc., to IAPMO regarding 2021 UMC/UPC Report on Proposals-Legionella Addendums). We hereby incorporate by reference the objections contained in such letters in this appeal as if fully restated here.

Procedures or Sections of the Standard(s) That Are at Issue

Mr. Terry Burger
May 23, 2022
Page 2

At issue are the proposed amendments to the UPC and UMC related to cooling towers and Legionella, including proposed appendices, and the public comments on the amendments.¹ These include, but are not limited to, the following:

- UPC Item # 305, Appendix N, Table 1701.2
- UPC Item # 307, Appendix P, Table 1701.2
- UMC Item # 321, Appendix F
- UMC Item # 323, Appendix H, Table 1701.2
- UMC Item # 324, Section J 101.01–J 201.1
- UMC Item # 325, Section J 201.0–J 201.1, J 301.0–J 301.2, Table 1701.2
- UMC Item # 326, Section J 301.3– J 301.4.1.1
- UMC Item # 327, Section J 401.0–J 401.1.3
- UMC Item # 328, Section J 201.0–J 201.1, J 501.0– J 501.3.1, Table 1701.2
- UMC Item # 329, Section J 601.0–J 601.1
- UMC Item # 330, Appendix J (relabelled as F), Table 1701.2

Additionally at issue are the following policies and procedures that were not followed:

- Openness (IAPMO/ASSE PP-1:2021 #1.7, ANSI Essential Requirement 1.1)
- Lack of Dominance (IAPMO/ASSE PP-1:2021 #1.8, ANSI Essential Requirement 1.2)
- Balance of Representation (IAPMO/ASSE PP-1:2021 #3.4, ANSI Essential Requirement 1.3)
- Conflict Between/Among Existing American National Standards (IAPMO/ASSE PP-1:2021 #10.1–#10.3, ANSI Essential Requirement 1.4)
- Notifications of standards activities (IAPMO/ASSE PP-1:2021 #5.1, ANSI Essential Requirement 1.5)
- Consensus (IAPMO Regulations Governing Committee Projects #3-3.7.1.2)
- Consideration of Views and Objections (ANSI Essential Requirement 1.6; IAPMO Regulations Governing Committee Projects #3-3.3.3)
- Hold (IAPMO Regulations Governing Committee Projects #4-4.6.2.2, 4-4.6.2.3) and Substantive Comment (IAPMO Regulations Governing Committee Projects #4-4.9.2)

¹ The item numbers and code sections listed in this appeal letter are based on the 2022 UMC and UPC Technical Committee Monographs. We understand that some code sections may have since been redesignated (in particular, we understand that Appendix J is now Appendix F). Any reference to a proposed amendment to or section of the code that has since been redesignated should be understood to include the redesignated amendment or section and all references to Appendix J should include Appendix F where applicable.

Mr. Terry Burger
May 23, 2022
Page 3

Actions and Inactions at Issue and Argument

The actions at issue include, but are not limited to, the following:

- Plumbing Technical Committee's acceptance of:
 - Comment #1 to UPC Item #305
- Plumbing Technical Committee's rejection of
 - Comments #2–#4 to UPC Item #305
- Mechanical Technical Committee's acceptance of:
 - Comment #1 to UMC Item #323
 - Comment #1 to UMC Item #324
- Mechanical Technical Committee's rejection of:
 - Comment #1 to UMC Item # 321
 - Comments #2, #3, #5–#7, and #9–#11 to UMC Item #323
 - Comment #2 to UMC Item #324
 - Comment #1 to UMC Items #325 to 329
 - Comment #1 to UMC Item #330

The proposed amendments, substantiations for these proposals, and the comments accepted by the technical committees as listed above are the obvious by-products of misrepresentations, misleading claims, and/or inflammatory statements regarding the cooling tower industry that are designed to impair the cooling tower industry and promote alternative products in an unlawful anticompetitive effort. They are not based on considered scientific and technical merit sufficient to support such changes. Those promoting and supporting the proposed amendments and public comments have a financially self-serving interest in reducing or eliminating the use of cooling towers and are acting under the guise of concern for public safety to create regulatory actions from which they can profit.

We believe the adoption of the proposed amendments relating to cooling towers may unlawfully restrict competition in violation of the federal Lanham Act, state statutes protecting against unfair competition and deceptive business practices, and/or state and federal antitrust laws, including the Lanham Act, which prohibits any “false or misleading description of fact, or false or misleading representation of fact, which . . . misrepresents the nature, characteristics, [or] qualities . . . of his or her or another person’s goods, services, or commercial activities.” 15 U.S.C. § 1125(a)(1). A goal of geothermal-industry participants in the code amendment process is to impose heavy regulatory burdens on evaporative cooling technologies. This was evidenced by a now-rejected proposed section of Appendix H, H 202.16, which would have required alternatives to evaporative cooling systems to be evaluated. Further, the dominance of interested parties and the lack of representation from the cooling tower industry and building owners and operators in contravention of IAPMO and ANSI requirements (as further described below) are

Mr. Terry Burger
May 23, 2022
Page 4

particularly problematic. Please see attached May 2, 2022, letter from Jeffrey J. Jones to IAPMO regarding the 2022 UMC and UPC proposals for a more detailed account of the law as applicable to IAPMO's conduct.

The inactions at issue include, but are not limited to, the failure to comply with the policies and procedures listed above and as follows:

- Openness (IAPMO/ASSE PP-1:2021 #1.7, ANSI Essential Requirement 1.1)
 - The cooling tower industry and building owners and operators and their tenants, who would be materially affected by the adoption of Appendices J (reabeled as F) and H, were not represented in the membership of the Legionella Task Group, which is linked to Appendices J (reabeled as F) and H via respective authors Jay Egg, who sits on the task group, and Julius Ballanco, who is “Rep. Chair” of the task group. Neither were they solicited to participate in the development of the appendices.
- Lack of Dominance (IAPMO/ASSE PP-1:2021 #1.8, ANSI Essential Requirement 1.2)
 - Based on our inquiries, no manufacturers of water-using equipment sit on the Mechanical Technical Committee or the Plumbing Technical Committee. Neither are building owners and operators represented on the committee.
 - IAPMO itself, by virtue of appointing members to the Mechanical Technical Committee and the Plumbing Technical Committee, dominates the adoption of applicable codes and amendments. IAPMO is an interested party in relation to the proposed appendices. Based on our inquiries, IAPMO's divisions or affiliates ASSE and IAPMO R&T also stand to gain increased revenue from their training, certification programs, or other activities should such appendices become incorporated. Importantly, in the October 28, 2020, ASSE board meeting, discussion on ASSE certification Series 12000 indicated that it was to be their future growth plan and focused entirely on revenue; there was no mention of reducing cases of Legionnaires' disease or concern for patients or workers that could be exposed to contaminated water in the piping.
 - The development of the proposed amendments to the UPC and the UMC and many of the technical committee-approved public comments was dominated by special-interest groups and consultants that stand to profit from the proposals. Additionally, based on our inquiries, manufacturers of water-using equipment and building operators and owners were not represented in the Legionella Task Group, members of which were involved in developing the proposed amendments.
- Balance of Representation (IAPMO/ASSE PP-1:2021 #3.4, ANSI Essential Requirement 1.3)

Mr. Terry Burger
 May 23, 2022
 Page 5

- The Legionella Task Group, the “Rep. Chair” of which drafted Appendix H, consists of many representatives or organizations that will benefit from the new appendices, including testing laboratories, water treatment providers, water management plan consultants, and the geothermal industry (which stands to benefit from the restrictions placed on evaporative heat-rejection equipment). Based on our inquiries, the majority of the 19 members that constitute the task group stand to profit from the adoption of the proposed appendices either because they are competitors of the cooling tower industry or offer certifications, testing, or sale of products and services required to comply with the appendices. Conversely, based on our inquiries, no manufacturers of cooling towers or building owners and operators were included in the task group.
- Conflict Between/Among Existing American National Standards (IAPMO/ASSE PP-1:2021 #10.1–#10.3, ANSI Essential Requirement 1.4)
 - An existing ANSI Standard, ASHRAE Standard 188 (along with Guideline 12), conflicts with the proposed amendments applicable to cooling towers. Based on our inquiries, good-faith efforts to harmonize ASHRAE Standard 188 with the UMC proposals were not made, and the Legionella Task Group independently developed Appendix H without reconciling such provisions with ASHRAE Standard 188 and the judgments made in developing ASHRAE Standard 188. The differences between these codes and appendices and ASHRAE Standard 188 will also lead to confusion in the marketplace. In fact, the U.S. Centers for Medicaid and Medicare and the Joint Commission on Health Accreditation require healthcare and assisted living facilities to develop and implement water management plans based on ASHRAE Standard 188. Even the CDC based its “Legionella Toolkit” on Standard 188.
- Notifications of Standards Activities (IAPMO/ASSE PP-1:2021 #5.1, ANSI Essential Requirement 1.5)
 - Based on our inquiries, the evaporative heat-rejection equipment industry was not contacted by IAPMO in connection with the development of new standards.
- Consensus (IAPMO Regulations Governing Committee Projects #3-3.7.1.2)
 - Consensus has not been achieved regarding the proposed amendments to the UPC and UMC. Consensus requires “substantial agreement . . . by materially affected interest categories” and that “a concerted effort be made toward the[] resolution” of all views and objections. The cooling tower industry is a materially affected interest category in regard to code provisions related to cooling towers and Legionella. Additionally, there has not been a concerted effort to resolve the cooling tower manufacturers’ concerns.

Mr. Terry Burger
 May 23, 2022
 Page 6

- Consideration of views and objections (ANSI Essential Requirement 1.6; IAPMO Regulations Governing Committee Projects #3-3.3.3)
 - A good-faith effort to resolve all expressed objections accompanied by comments related to the proposals was not made.
 - Additionally, based on our information, when a representative of one of our clients came to the podium to discuss Comment #7 to UMC Item #232, a technical committee member (who, as a geothermal installer, has interests opposed to the cooling tower industry) made a blanket motion to reject the rest of the representative’s comments, including Comments #7 and #9–#11. We understand that this motion passed. Because of this, equal opportunity to address the committee was not afforded those with opposing views to the comments, as is required under the IAPMO regulations.
- Hold (IAPMO Regulations Governing Committee Projects #4-4.6.2.2, 4-4.6.2.3) and Substantive Comment (IAPMO Regulations Governing Committee Projects #4-4.9.2)
 - Technical committees are required to “hold for processing as a Proposal for the next revision cycle a comment that . . . would propose something that could not be properly handled within the time frame for processing the report.” The complexity of Legionella requires that thoughtful consideration be given to provisions purporting to address such scientific matters. For example, ASHRAE Standard 188 involved a twelve-year standard-development process that included a cross-section of stakeholders, including the CDC, EPA, microbiologists, engineers, chemists, manufacturers, and water treatment professionals. The proposed amendments to the UPC and UMC related to cooling towers and Legionella are complex issues, and sufficient debate, consultation, and public review has not yet taken place.
 - Similarly, when a technical committee receives a comment that the committee believes has merit and must be considered in the instant revision but that requires research and discussion by the committee that cannot be handled within the time frame established for processing the report, the committee may either (1) withdraw the report and submit its ROC for consideration at the association meeting immediately following the one at which it was scheduled to present the report or (2) submit a new ROP in a new standards-making cycle. Given the complex nature of Legionnaires’ disease and the proposals and comments at issue, the technical committees should have agreed to follow this process.

Specific Remedial Action(s) and Relief That Would Satisfy the Appellants’ Concerns

Appellants request that the proposed changes to the UPC and UMC that were rejected as listed above be accepted and that the proposed changes that were accepted as listed above be rejected. Appellants’ written objections to the proposed amendments as listed in their submitted

Mr. Terry Burger
May 23, 2022
Page 7

public comments/proposals should be sustained, and IAPMO should cease its consideration of adopting Appendices H and Appendix J (relabelled as F).

Appellants further request that IAPMO cease and desist from any activity that involves promoting, approving, or adopting proposed codes or appendices that do not conform to IAPMO's policies, procedures, and regulations and to ANSI's requirements. In addition, appellants request that IAPMO immediately disassociate and segregate the development of any standards for the cooling tower industry from any competitors or profit-making entities that stand to benefit from the adoption of such standards and that create a clear conflict of interest.

If you would like to discuss these issues, please let us know. In the interim, our clients reserve any rights they may have to seek appropriate relief to the extent permitted by applicable law. We further note that our appeal is made subject to and without waiving any other objections, defense, procedural violations, and claims and that all such objections, defenses, and claims are expressly reserved. Thank you for your attention to these matters.

Very truly yours,

/Jeffrey J. Jones/
Jeffrey J. Jones

Attachments